

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

JAMES WERTS,

Defendant.

CASE NO. 8:06CR288

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the government’s objection thereto (Filing No. 131). The Court has also received the Defendant’s motion for downward departure or variance (Filing No. 132). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The government objects to the lack of a 4-level upward adjustment in ¶ 47 pursuant to U.S.S.G. 2K2.1(b)(5) (possession of a firearm or ammunition in connection with another felony offense). The plea agreement states: the government will argue in favor of the enhancement; the Defendant reserves the right to argue the issue at sentencing; and the Defendant agrees that the standard is by a preponderance of the evidence. The government bears the burden by a preponderance of the evidence. If the parties require more than 30 minutes for the sentencing hearing, they shall contact Edward Champion and reschedule the hearing.

The Defendant's motion for downward departure or variance is based on overstatement of criminal history. The motion will be heard at sentencing.

IT IS ORDERED:

1. The government's objection to the Presentence Investigation Report (Filing No. 131) will be heard at sentencing;
2. The Defendant's motion for downward departure or variance (Filing No. 132) will be heard at sentencing;
3. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;
4. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
5. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and
6. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 19th day of March, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge